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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,705	03/23/2001	Kazuhiko Sugiyama	P/126-202	5930
44987	7590	08/05/2005	EXAMINER	
HARRITY & SNYDER, LLP 11240 WAPLES MILL ROAD SUITE 300 FAIRFAX, VA 22030			RYMAN, DANIEL J	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/816,705	SUGIYAMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel J. Ryman	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/28/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. The references seen on page 1, lines 13-17 and page 14, lines 1-15 should be submitted in an IDS.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: ref. sequence t and sequence u (see page 9, lines 17-28 and Fig. 2). Corrected drawing sheets, or amendment to the specification to add the reference character(s) in the description, are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. Figure 6 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Specification*

4. The abstract of the disclosure is objected to because it exceeds 150 words in length. In addition, the abstract should include a definition for the acronym LSP (label switch path (LSP)). Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: on page 5, lines 16-19, the specification states that Fig. 5 is a diagram while Fig. 6 is a flowchart where Fig. 5 is a flowchart and Fig. 6 is a diagram.

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 10 is rejected under 35 U.S.C. 102(e) as being anticipated by Doshi et al. (USPN 6,529,499).

7. Regarding claim 10, Doshi discloses a router (ref. 220) used for a network using an Internet protocol connected between a first voice network and a second voice network to

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implement voice communication between a telephone subscribing to said first voice network and a telephone subscribing to said second voice network (Fig. 1 and col. 2, line 46-col. 4, line 19), wherein said router (ref. 220) sets a path having a band that is equal to or more than a double band of a band necessary for transferring a VoIP packet in accordance with control by a call control apparatus (ref. 230: virtual provisioning server), thereby establishing a plurality of connections in said path (col. 2, line 46-col. 3, line 67; col. 4, lines 28-44; and col. 4, line 58-48) where each path has a band that is sufficient to support multiple connections (col. 4, line 65-col. 5, line 6) such that each path would have a band equal to or more than a double band of said necessary band.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doshi et al. (USPN 6,529,499).

10. Regarding claims 1 and 8, Doshi discloses an Internet telephone system for voice communication between a telephone subscribing to a first voice network and a telephone subscribing to a second voice network via a network using an Internet protocol (Fig. 1 and col. 2, line 46-col. 4, line 19), comprising: a plurality of routers (ref. 220) which constitute said network and use a switching technique, respectively (col. 4, lines 1-19); a first media gateway (ref. 215: packet circuit gateway, PCG) which is connected across a first specific router among said

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plurality of routers and a first signaling transfer point (ref. 250: signaling gateway) connected to said first voice network, and assembles/resolves a VoIP packet (col. 2, line 46-col. 3, line 42); a second media gateway (ref. 215: packet circuit gateway, PCG) which is connected across a second specific router among said plurality of routers and a second signaling transfer point (ref. 250: signaling gateway) connected to said second voice network, and assembles/resolves a VoIP packet (col. 2, line 46-col. 3, line 42); a path control unit (ref. 230: virtual provisioning server) which checks whether or not there is a path having a residual band larger than a band necessary for transferring said VoIP packet between said first specific router and said second specific (col. 3, lines 43-67; col. 4, lines 28-44; and col. 4, line 58-48); and a packet control unit (ref. 250: signaling gateway) which is connected to said path control unit (ref. 230: virtual provisioning server), and instructs said first media gateway (ref. 215: packet circuit gateway, PCG) and said second media gateway (ref. 215: packet circuit gateway, PCG) to transfer said VoIP packet via the path that is checked by said path control unit (Fig. 1 and col. 3, lines 43-61). Doshi does not expressly disclose in the main embodiment that the routers are label switch routers; that, when it is determined that there is not said path, the path control unit sets a new path having a band that is equal to or more than a double band of said necessary band; or that the path set by said path control unit is used when another path cannot be found; however, Doshi does disclose in another embodiment that the routers can be label switch routers since label switch routers are well known (col. 9, lines 54-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the routers be label switch routers since label switch routers are well known. Doshi also discloses that, when label switch routers are used, the path control unit (ref. 230: virtual provisioning server) "maintains a knowledge base of possible multiple paths

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between pairs of" media gateways (ref. 215: packet circuit gateway, PCG) such that the packet control unit (ref. 250: signaling gateway) is instructed to admit a new call when there is capacity over any of the possible paths (col. 9, lines 54-56) where each path has a band that is sufficient to support multiple connections (col. 4, line 65-col. 5, line 6) such that each path would have a band equal to or more than a double band of said necessary band. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to set, when it is determined that there is not said path, by the path control unit, a new path having a band that is equal to or more than a double band of said necessary band and to use this path for the new connection since these steps are implemented when label switch routers are used.

11. Regarding claims 2 and 9, Doshi does not expressly disclose that the path to be set by said path control unit has a band that is equal to or more than a hundred times of said necessary band; however, Doshi does disclose that each path can support multiple connections (col. 4, line 65-col. 5, line 6). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Doshi discloses that the path has a band that is equal to or more than a number of times of the necessary band, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the band be equal to or greater than

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any number of times the necessary band, including a hundred, absent a showing of criticality by Applicant.

12. Regarding claim 3, Doshi implicitly discloses a route control unit which controls said label switch router (col. 9, lines 54-64) since Doshi discloses that the router is a label switch router (col. 9, lines 54-64) and Doshi discloses that the Signaling Gateways are capable of dictating which path out of a plurality of alternative paths a packet should traverse between the label switch routers (col. 9, lines 54-64). Thus, Doshi implicitly discloses a route control unit which controls said label switch router since a route control unit is necessary for a unit to designate a particular path through a network of label switch routers for a packet to traverse.

13. Regarding claim 4, Doshi discloses that the route control unit is provided to each label switch router since each router is capable of routing a packet among a variety of paths (col. 9, lines 54-64) where "provided to" is a broad phrase which only requires that each label switch router is connected to a route control unit.

14. Regarding claim 5, Doshi discloses that the route control unit is connected to all label switch routers (col. 9, lines 54-64) since each label switch router would need to have access to the route control unit in order for the router control unit to specify a particular path through the network of label switch routers.

15. Regarding claim 6, Doshi discloses a path setting method of setting a path to which a band is ensured on a network using an Internet protocol connected between a first voice network and a second voice network to execute voice communication between a telephone subscribing to said first voice network and a telephone subscribing to said second voice network (Fig. 1 and col. 2, line 46-col. 4, line 19), comprising the steps of: determining whether or not there is a path



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having a residual band larger than a band necessary for transferring a VoIP packet between two edge routers (ref. 220) by a path control unit (ref. 230: virtual provisioning server) (col. 3, lines 43-67; col. 4, lines 28-44; and col. 4, line 58-48). Doshi does not expressly disclose in the main embodiment that the routers are label switch routers or that, when it is determined that there is not said path, the path control unit sets a new path having a band that is equal to or more than a double band of said necessary band; however, Doshi does disclose in another embodiment that the routers can be label switch routers since label switch routers are well known (col. 9, lines 54-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the routers be label switch routers since label switch routers are well known. Doshi also discloses that, when label switch routers are used, the path control unit (ref. 230: virtual provisioning server) "maintains a knowledge base of possible multiple paths between pairs of" media gateways (ref. 215: packet circuit gateway, PCG) such that the packet control unit (ref. 250: signaling gateway) is instructed to admit a new call when there is capacity over any of the possible paths (col. 9, lines 54-56) where each path has a band that is sufficient to support multiple connections (col. 4, line 65-col. 5, line 6) such that each path would have a band equal to or more than a double band of said necessary band. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to set, when it is determined that there is not said path, a new path having a band that is equal to or more than a double band of said necessary band since this step is implemented when label switch routers are used.

16. Regarding claim 7, Doshi does not expressly disclose that the path to be set by said path control unit has a band that is equal to or more than a hundred times of said necessary band; however, Doshi does disclose that each path can support multiple connections (col. 4, line 65-

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col. 5, line 6). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Doshi discloses that the path has a band that is equal to or more than a number of times of the necessary band, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the band be equal to or greater than any number of times the necessary band, including a hundred, absent a showing of criticality by Applicant.

17. Regarding claim 11, Doshi does not expressly disclose that the path has a band that is equal to or more than a hundred times of said necessary band; however, Doshi does disclose that each path can support multiple connections (col. 4, line 65-col. 5, line 6). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215

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(CCPA 1980). Since Doshi discloses that the path has a band that is equal to or more than a number of times of the necessary band, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the band be equal to or greater than any number of times the necessary band, including a hundred, absent a showing of criticality by Applicant.

18. Regarding claim 12, Doshi does not expressly disclose in the main embodiment that the router is a label switch router; however, Doshi does disclose in another embodiment that the routers can be label switch routers since label switch routers are well known (col. 9, lines 54-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the routers be label switch routers since label switch routers are well known.

19. Regarding claim 13, incorporating the rejection of claims 1, 6, and 8, Doshi discloses all of the limitation of claim 13, as outlined in the rejection of claims 1, 6, and 8, except that the method is implemented using a computer program product. Examiner takes official notice that it is well known to implement a method using software since software is flexible. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement the method using a computer program product since software is flexible.

20. Regarding claim 14, Doshi does not expressly disclose that the path to be newly set has a band of a hundred times of said necessary band; however, Doshi does disclose that each path can support multiple connections (col. 4, line 65-col. 5, line 6). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108,

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65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Doshi discloses that the path has a band that is equal to or more than a number of times of the necessary band, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the band be equal to or greater than any number of times the necessary band, including a hundred, absent a showing of criticality by Applicant.

### *Conclusion*


21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Doshi et al. (USPN 6,674,744) see entire document which pertains to using label switch routers to communicate VoIP packets. Mauger et al. (USPN 6,522,627) see entire document which pertains to using label switch routers to communicate VoIP packets. Mauger et al. (USPN 6,507,577) see entire document which pertains to using label switch routers to communicate VoIP packets.

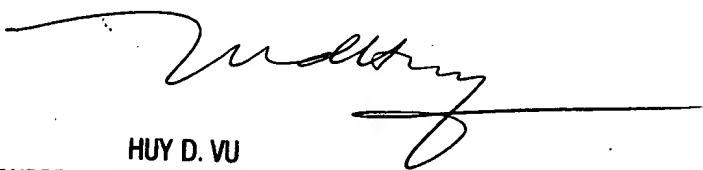
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 7:00-4:30 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 Daniel J. Ryman  
Examiner  
Art Unit 2665

  
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